



<b>Circular Details</b>	Circular No 23-04 / 25 May 2023 / A860043
<b>Previous Circular</b>	<i>21-33 Compliance with records management provisions and transfer of local government records to the State Archives Collection</i>
<b>Who should read this</b>	Councillors / General Managers / Joint Organisation Executive Officers / governance and records management staff
<b>Contact</b>	Council Governance Team / 02 4428 4100 / <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>Action required</b>	Information / Council to Implement

## Changes to public access to council records under the *State Records Act 1998*

### What's new or changing

- Changes to the *State Records Act 1998* (the Act) that take effect from 1 January 2024 will affect council records. Under the changes:
  - State records will be open to the public by default once they are 20 years old, unless they are closed via a Closed to Public Access (CPA) direction
  - public offices (including councils) will be required to submit a plan in 2024 outlining their intention to transfer records that are required as State archives.
- As a result of changes to the Act that took effect on 31 December 2022, parts of the Act governing public access, transfers and records that have strayed ('estrays') are now administered by Museums of History NSW (MHNSW), a new statutory body.
- Other parts of the Act are administered by State Records Authority NSW (State Records NSW).

### What this will mean for your council

- Councils will need to renew or register CPA directions with MHNSW well in advance of 1 January 2024 to ensure appropriate protection of sensitive information.
- During 2024, councils will need to submit a transfer plan to MHNSW.

### Key points

- Changes to the parts of the Act administered by MHNSW are as follows:
  - Section 32(4): Transfer planning - this new section will require public offices (including councils) to plan for the transfer of records required as State archives into the State Archives Collection, and to submit a plan to MHNSW. This requirement will apply even if there is no intention to transfer records at the present time.
  - Section 50: Reduction in the Open Access Period - the Open Access Period for State records will reduce from 30 years to 20 years. The Act establishes a presumption that records in the Open Access Period should be open to public access.

- Section 51: State records will become open to the public by default after 20 years - State records that are at least 20 years old will be open to public access if they are currently subject to an Open to Public Access (OPA) direction or do not have an access direction in place. There is no change to the capacity for a public office to apply a CPA direction or the requirement for CPA directions to be renewed every 5 years.
- The changes mean that from 1 January 2024:
  - State records that currently have a 30-year OPA direction registered will be open to the public once they are 20 years old
  - State records that are 20 or more years old and do not have an access direction registered will automatically be open to the public.
- CPA directions that were made more than 5 years ago will need to be renewed before 1 January 2024 or the records will automatically be open to the public once they are 20 years old.

### **Where to go for further information**

- Advice on access directions is available on the [Public access to records section](#) of the MHNSW website.
- Councils can review or renew existing access directions and register new directions through the Service Portal operated by MHNSW and State Records NSW. The Service Portal is available via the [Agency Services webpage](#).
- Email [transfer@mhnsw.au](mailto:transfer@mhnsw.au) for advice and assistance with these new requirements.

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